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Supreme Court of the United States.

October Term, 1949.

No. 170.

PARK-IN THEATRES, INC.,
Petitioner,

v.

LOEW'S DRIVE-IN THEATRES, INC.,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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The Hollingshead patent in suit is for a Drive-In Theater. A drive-in theater is a plot of ground or field into which customers may drive their cars and, without alighting, view a stage performance or movie. The seats of the parked cars become the theater seats.

The sole issue presented by this case is that of patentable invention. The finding of absence of patentable invention was reached by an experienced court, the Court of Appeals for the First Circuit (Judges Magruder, Woodbury and Peters concurring), after careful consideration and full argument.

There is no conflict of decision between different Courts of Appeals, no new or doubtful question of law, important or unimportant, no conflict between the decision of the

court and applicable decisions of this or any other court, and no matter of public interest or importance.

This is merely an ordinary and unusually simple patent case, with no "special and important reasons" for granting the writ. There is here merely a very common question of fact in patent cases, that is, whether, under all the circumstances of the case, what the patentee did amounted to invention, or was merely something obvious to those skilled in the art.

Petitioner asserts a conflict between the decision in the present case and that of the Court of Appeals for the Ninth Circuit in *Park-In Theatres, Inc.*, v. *Rogers*, 130 F. (2d) 745. There is no conflict whatever, as we will presently show.

In addition to the alleged conflict, petitioner sets forth eight additional reasons as to why its petition should be granted, which, with subdivisions, comprise the assertion of some ten errors allegedly committed by the Court of Appeals in its rather brief, simple and conventional opinion on the issue of patentable invention. Petitioner argues each of these numerous alleged errors with equal emphasis, in a petition and brief which, in breach of the brevity and conciseness requirement of Rule 38 of this Court, burdens the Court with a confusing and interminable phantasmagoria of unwarranted allegations and unsound contentions.

Petitioner, in its zeal for another hearing, has repeated at length its argument on the merits unsuccessfully made before the appellate court. Certiorari jurisdiction was not conferred on this Court to give a defeated party another hearing,* and a certiorari petition is not a rehearing or an appellate proceeding. We shall therefore not burden the Court with a reargument of the issue of patentable inven-

*Petitioner can have another hearing on patentability in any one of a number of cases on the Hollingshead patent now pending in other circuits.

tion or with an analysis of petitioner's highly colored assertions as to the testimony.

Nor shall we burden the Court with any extensive analysis of the innumerable errors with which the Court of Appeals is charged. The quite conventional decision of the court speaks for itself and finds absence of patentable invention, under all the circumstances of the case, on the basis of time honored principles and considerations.

Outline of the Case.

The original complaint (R. p. 1) asked for unpaid royalties for a short period prior to cancellation of defendant's license and for damages for infringement following cancellation. The answer set up customary patent defenses, including invalidity for absence of patentable invention (R. p. 10, par. 16). Subsequently petitioner asked for injunctive relief (R. p. 420), which was granted by the interlocutory judgment (R. p. 424), from which defendant appealed, assigning, as one of its Statement of Points, absence of invention (R. p. 436, par. 2).*

The Court of Appeals in the opening portion of its opinion raised a question of appellate jurisdiction as to the claim for unpaid royalties. Petitioner does not rely on

*Petitioner's continued assertion (see, for instance, Petition, p. 23; Br. p. 64) that defense of absence of invention was neither pleaded nor assigned in the Statement of Points is a gross misstatement, as the record references above cited show. Moreover, it is the duty of a court at trial or on appeal to consider invalidity, even though not pleaded or even raised by defendant, because of the public interest involved. *Hill* v. *Wooster*, 132 U.S. 693, 698. *Magic City Kennel Club* v. *Smith*, 38 F. (2d) 170, 173 (C.C.A. 10th). *Wills* v. *Scranton Cold Storage & W. Co.*, 153 Fed. Rep. 181, 184 (C.C.A. 3d). *Slawson* v. *Grand Street R.R. Co.*, 107 U.S. 649, 652. *Jones* v. *Cyphers*, 126 Fed. Rep. 753, 754 (C.C.A. 2d). *Hendy* v. *Golden State &c.*, 127 U.S. 370, 375.

any alleged error as to this matter, and it need not concern us in this proceeding.

There was also a misuse defense which the Court of Appeals had no occasion to consider in view of its holding of invalidity.

The Record and the Issue.

Hollingshead noticed certain inconveniences of the indoor movie theater—uncomfortable seats, getting up and down, difficulty of parking,—and "struck on the idea of watching the moving pictures from the car" as a way of eliminating these inconveniences (R. p. 73).

Having conceived the idea that a theater or plot of ground in which the spectator will watch the movie from his car would fill a need and be a good business venture, Hollingshead, to satisfy himself, tried the thing out by a crude experiment in his driveway—by setting up a screen and aiming two cars at the screen, one behind the other, at different levels, as with the seats of a theater, as described in the extract from defendant's brief on appeal quoted in Appendix G, accompanying the petition.

Hollingshead then filed his patent application, showing, by rather rough drawings (R. p. 441) a general layout of a plot of ground, with a screen, necessary aisles or stallways, rows of car (seat) locations in rows on concentric arcs as in the usual theater, provision for aiming the cars or seats at the screen, and the usual sloping floor and terracing of seat locations, all as in a theater.

Claim 2 (R. p. 449) is typical of the claims in issue and covers broadly an outdoor theater with rows of curvilinear driveways and stallways (like the rows in a theater), said stallways (seat locations) facing the stage and having such inclination as will permit the car (seat) occupant to see the stage or screen over the cars ahead. Any departure from

the horizontal found necessary in any particular terrain to aim the car at the screen over the car ahead is covered.

The issue was clear and simple. Having the idea that a drive-in theater in which the spectator would view the screen from his car would fill a need and be a good business venture, under all the circumstances of the case, did it involve patentable genius, capacity beyond that of a man skilled in the art, to lay out a plot of ground to carry the idea into practical application, in the manner shown by the Hollingshead patent?

We shall not go into the voluminous evidence of record. To support invention, plaintiff emphasized statements of witnesses as to the "ingenuity" of the drive-in theater and its novelty and utility in giving entertainment. Plaintiff further emphasized defendant's advertisements of the drive-in theater as an "outstanding innovation" and a "genuine novelty." Defendant's evidence, including numerous prior patents and publications, showing and describing theater layouts and expedients for positioning, tilting and adjusting theater seats (horizontally and vertically) to give good vision to the stage or screen, without craning (R. pp. 187-188, 228-229, 255-257, 607-647, 655, 657-659, 661, 667-671, 681-682), together with the testimony of two theater architects (Schlanger and Rand, R. pp. 276 *et seq.*), was relied upon to show that in laying out a plot of ground for a drive-in theater, to position the automobile seats for good vision to a screen without craning, as shown in his patent, Hollingshead had merely applied and utilized the most elementary and familiar principles and expedients of theater arrangement, long practised and used in locating, terracing and aiming ordinary theater seats for good vision with relation to a stage or screen. The indoor theater, long prior to Hollingshead, commonly had the essential counterparts of everything shown in the Hollingshead patent.

The Decision of the District Court.

In finding patentable invention, the District Court (R. p. 413) relied upon the testimony of witnesses that the drive-in theater is "ingenious," "practical," "a good business investment," "a completely new idea of giving entertainment to people who could not ordinarily go to the theater," and "is a beneficial contribution to the art of exhibition of motion pictures."

The lower court (R. pp. 413-414) further relied upon defendant's advertising that the drive-in theater is an "outstanding innovation in the amusement world," is "new," "unique," and a "genuine novelty" which has met with "immediate and enthusiastic approval from the public."

All the court's foregoing findings were directed to the novelty and success of the drive-in theater idea as a business venture.

Continuing, the lower court pointed out that no prior patents, publications or prior uses disclosed a drive-in theater prior to Hollingshead, and that it does not appear that any architect or engineer had ever given any thought to such a theater (R. p. 414). From this evidence, merely of the admitted novelty of the drive-in theater idea and the absence of any prior thought or effort along this line, the court concluded (R. p. 414) that Hollingshead "exercised inventive genius," an unsound conclusion to draw from the mere fact of novelty of the idea, as the Court of Appeals pointed out, and as is well settled (*infra*). An idea, such as the drive-in theater idea, however new and useful, is not patentable and cannot impart patentability to means which are old or lacking in inventive genius.

The lower court did not point to or rely upon any invention of means as is necessary to find patentability. The fact that no one before Hollingshead had supplied clear vision in a drive-in theater is quite beside the point, since no one,

as the lower court found (*supra*), had ever, prior to Hollingshead, thought of a drive-in theater. And until someone did at least think of such a theater, no problem, hard or easy, arose for solution.

The Decision of the Court of Appeals.

The Court of Appeals analyzed the patent disclosure, conceded that a drive-in theater structure may be the subject matter of patent, as decided in the *Rogers* case which it cited, and, under all the circumstances of the case, found absence of patentable invention.

The court stated (R. p. 775) that the basic question is whether, given the idea of an open air drive-in theater, "an exercise of the inventive faculty was required to devise means for carrying it out," for, as the court pointed out, it is "elementary" that an idea, a way of transacting business, however novel and useful, is not itself patentable "apart from the means for making the system practically useful, or carrying it out," citing some of the leading decisions of this and other courts.*

The court pointed out that this principle rendered "beside the point" considerations of the novelty and success of the idea relied upon by the lower court (*supra*). "For

*Recently someone had the bright and novel idea of a laundry shop, supplied with a conveniently arranged battery of coin operated clothes-washing machines, where people can bring washing, deposit it in the washing machine and wait for it or return later in the day. This idea was novel and highly beneficial in these times and the so-called "Laundryettes" have swept the country. Obviously this idea of a new way of serving the public is not patentable, although the originator was something of a public benefactor.

There are many such new but unpatentable ideas of ways of doing business, such as the familiar drive-in bank, which calls for a special layout whereby the bank customer can conduct his business without leaving his automobile. The Court of Appeals (R. p. 776) referred to cafeteria systems.

we are not here called upon to deal with the novelty, usefulness or commercial success of an outdoor drive-in theater as an idea, or as a system of transacting business, but with 'the mechanical means or instrumentalities . . . by which it [the idea or system] may be made practically useful' " (R. p. 776).

The court then turned its attention to the means or instrumentalities disclosed in the patent for carrying out the drive-in theater idea and found the alleged invention of the claims wanting in patentable quality.

The court (p. 779) observed that the argument for patentability was not "buttressed" by evidence of any long standing problem of means, finally solved by Hollingshead.*

In conclusion the court found that the lower court was impressed by the novelty and success of the drive-in theater idea, but failed to give consideration to the means employed to make the idea useful, and that its finding of patentability, based as it was upon the novelty and success of the drive-in theater as an idea, without regard to the means of the patent, was clearly erroneous.

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*It may be persuasive of patentability, or at least sufficient to give a court pause, that others had tried and failed and that the art had to wait long for the solution of a problem. See, for instance, *Bresnick* v. *United States Vitamin Corp.*, 139 F. (2d) 239, 241 (C.C.A. 2d, L. Hand, J.). See also *Goodyear Tire & Rubber Co.* v. *Ray-O-Vac Co.*, 321 U.S. 275, where the patentee solved a "problem" which had "plagued the industry" (p. 276) for a "period of half a century" (p. 279). In *National Battery Co.* v. *Richardson Co.*, 63 F. (2d) 289, the patentee had solved an old problem (p. 290) by departing from prior practices (p. 292) after "extensive experimentation" for "about a year" (p. 290). The court observed that the lack of obviousness was also shown "by the failure of others" (p. 292). Plaintiffs commonly endeavor to rebut a defendant's contention of obviousness or lack of patentable quality with evidence of this character. There was nothing of this sort in the present case, as the Court of Appeals observed. And see footnote, *infra*, p. 14.

No Conflict with the Decision of the Court of Appeals for the Ninth Circuit in the Rogers Case.

In *Park-In Theatres, Inc.*, v. *Rogers*, 130 F. (2d) 745, the Court of Appeals for the Ninth Circuit held on motion for summary judgment that the drive-in theater structure of the Hollingshead patent is a "manufacture" or "machine" within the classification of patentable subject matter of the statute (35 U.S.C.A., Sec. 31), and therefore the lower court was in error in holding the Hollingshead patent invalid for want of patentable subject matter. Although, as the court stated (p. 748), the lower court had "confined its conclusion to the proposition that the theater was not a patentable subject and, consequently did not consider the question of invention . . . ,"* the defendant had apparently asked the Court of Appeals also to pass on this question, on the ground that, if the opinion of the lower court can be sustained on any ground, judgment should be affirmed. The Court of Appeals declined to pass on the question of patentable invention on summary proceeding, and returned the case to the lower court for trial. No further proceedings have been had.

In the present case, the Court of Appeals did not contest that the drive-in theater structure of the patent may be patentable subject matter within the statutory classification, as held in the *Rogers* decision which it cited (R. p. 775), but held invalidity solely on the ground of absence of patentable invention, the issue on which the Court of Ap-

*The point is entirely immaterial, but petitioner's brief is in error in asserting (p. 25 and elsewhere) that the lower court in the *Rogers* case held the Hollingshead patent invalid for want of invention. We will not go into the matter, but the lower court's Statement of Facts and Conclusions of Law, with the court's erasures not reproduced in Petitioner's Appendix, shows that the Court of Appeals was correct in stating that the lower court did not pass on this issue.

peals declined to pass on summary proceedings. Therefore, there is no conflict between the two circuits.

Petitioner struggles to conjure up a number of alleged conflicts on grounds which are manifestly unsound.

As to point 1-A (Br. p. 23), obviously the Court of Appeals in the present case did not hold the Hollingshead patent "invalid for lack of invention on its face," as asserted in defendant's brief (p. 23), and this point is clearly unsound.

The issue and decision of the court in the *Rogers* case we have already referred to (*supra*). Obviously there is no conflict as asserted in petitioner's point 1-A.

As to point 1-B (Br. p. 27), the Court of Appeals in the present case did not, as alleged, base its decision on the theory "that Hollingshead's idea or conception of the drive-in theater *of the patent in suit** could not be considered in deciding the question of invention." On the contrary, the court held, in conformity with the established law of this and other courts, that the "outdoor drive-in theater as an idea" (as distinguished from the conception of means of the patent) as a "system for conducting the motion picture theater business" (R. p. 776) is not patentable "apart from means for making the system practically useful, or carrying it out." In this section of its brief, as in its argument of point 4 (Br. p. 38), the petitioner raises a straw man, namely, that the idea or conception which the court held was not patentable as an idea, in conformity with the decisions, was the idea or conception of means shown in the patent. The petitioner confuses the idea of conception of an open air drive-in theater as a system for conducting the motion picture theater business with the idea or conception of means described in the patent.

The Court of Appeals in the *Rogers* case was concerned with the question of whether the conception of means of the

*Emphasis in this brief is ours, except where otherwise noted.

Hollingshead patent should be held unpatentable on summary proceedings, and did not hold (as petitioner asserts) that the idea of an open air drive-in theater as a system for conducting the motion picture theater business might be patentable. Clearly there is no conflict.

As to point 1-C (Br. p. 29), the basis for the lower court's finding, which the Court of Appeals considered "beside the point," was testimony directed to the novelty and success of the drive-in theater as an idea and as a system for conducting the motion picture theater business, as is apparent from the statement of the Court of Appeals (R. p. 776), and the statement of the lower court (see Finding 18, R. p. 428).* Such evidence was beside the point for the reason given (R. p. 776).

The Court of Appeals for the Ninth Circuit did not find otherwise, and there is manifestly no conflict.

The Ten Alleged Errors of the Court of Appeals Set Forth in Points 2-9.

Points 2 (Br. p. 31) and 3 (Br. p. 35) call for no particular comment. Any presumption of validity from grant is

*Petitioner asserts (Br. p. 30) that the testimony to which the courts referred was directed to the construction of the Hollingshead patent in suit and not to the idea of a drive-in theater as a way of viewing pictures. This is not so, as is apparent from the statement of both courts. To the extent, if any, that witnesses in testimony not referred to by the lower court or the Court of Appeals undertook to testify that the means described and claimed in the Hollingshead patent involved ingenuity and invention, the witnesses entered the province of the court and such testimony was not pertinent. *American Stove Co.* v. *Cleveland Foundry Co.*, 158 Fed. Rep. 978, 984 (C.C.A. 6th). *Osgood Dredge Co.* v. *Metropolitan Dredging Co.*, 75 Fed. Rep. 670, 672 (C.C.A. 1st). *Fried* v. *Midvale*, 191 Fed. Rep. 588, 596 (C.C.A. 3d). *Kohn* v. *Eimer*, 265 Fed. Rep. 900, 902 (C.C.A. 2d). As Judge Learned Hand observed in the case of *Kohn* v. *Eimer*, *supra*, opinion evidence on the issue of patentable invention is "a burdensome impertinence."

not binding, the court did not, as alleged, find the patent "invalid on its face," and the charge that the court disregarded all the evidence is without basis and smacks of impertinence. Nor is the finding of the lower court as to validity binding on the Court of Appeals, which seems to be the burden of point 3.

Point 4 (Br. p. 38). We have already referred (*supra*) to the fallacy of petitioner's attack on the court's finding that the idea of a drive-in theater as a way of conducting a movie (as distinguished from the idea or conception of means for carrying it out) is not patentable. The principle enunciated by the Court of Appeals is a basic principle of patent law, as set forth in the decisions of this and other courts. For an analysis of some of the leading cases, see the Appendix to this brief.

The cases cited by the petitioner have to to with a *conception of means*, such, for instance, as the idea that a certain new combination of elements will work in a certain way and effect a new and useful result. A conception *of means*, as of a new combination of mechanical means or elements, as shown and described in a patent, may be patentable if it involves inventive genius, although, as is often the case, it is an easy matter, after the new combination or structure has been conceived, to put it together or make the new device or combination thus conceived, as shown and described in the patent.

The Court of Appeals in the present cases did not discard the combination of the patent (screen, aisles, stallways, and means for aiming the cars at the screen over the cars in front) as an unpatentable concept or idea on the authorities relied upon. On the contrary, almost the entire opinion is devoted to a consideration of whether or not, after Hollingshead had the idea of the drive-in theater as a good way of showing pictures, this further conception of the screen, aisles, stallways and aiming means, as shown

in the patent (the combination of mechanical means for making a drive-in theater practical), was sufficiently ingenious as to be beyond the capacity of a man skilled in the art.

Point 5. The petition (p. 19) contends that the court should have rescued the patent on the basis of alleged commercial success, and petitioner's brief (p. 48) adds the matter of alleged skepticism of the industry.* Petitioner merely reargues contentions thoroughly analyzed and argued before the Court of Appeals. While we are far from agreeing with petitioner's interpretation of the evidence, this is not the occasion for repeating our analysis of the testimony presented to the Court of Appeals and arguing the case over again.

Where there is no invention, extent of use is not a matter of moment (*Adams* v. *Bellaire Stamping Co.*, 141 U.S. 539, 542; *Grant* v. *Walter*, 148 U.S. 547, 556). The weight of the evidence of alleged skepticism is for the court to determine, along with the other circumstances of the particular case. Manifestly the court committed no error.

Point 6. The petition (p. 20) erroneously asserts that the Court of Appeals held "that invention is negatived by reason of the fact that it did not take the patentee long to perfect and embody the invention after having conceived it," and refers to "flash of creative genius rule of this court." In its brief (p. 53) the court is charged with ad-

*Interested witnesses testified to skepticism. But their skepticism must have concerned something other than seeing over the car ahead, for it was not removed when they were shown how this could be done (R. pp. 63, 123, 525-526). Anyone might well have been skeptical as to whether there could be suitable illumination and suitable sound reproduction and distribution over a large area to present a performance which would continue to attract crowds. Indeed, the evidence showed that commercial success only came after the troublesome sound problem (R. pp. 65, 124, 477, 483) was solved by R.C.A. with the advent of individual, in the car, loud speakers (R. pp. 185-186).

vancing the proposition that a long period of time must elapse between the original conception and reduction to practice or invention.

Clearly the court advanced no such propositions. The court merely observed as one circumstance (R. p. 779), in relation to the question of obviousness, that it did not take Hollingshead long to solve any problem involved in constructing a drive-in theater.* A history of long experimentation and struggle might be a persuasive circumstance in resolving a doubt in a particular case. But in this case there is no such history. The court committed no error in observing that fact as one of the circumstances of the case.

Point 7. We have referred (*supra* p. 8) to the court's observation that there was no evidence of a long-standing problem finally solved by Hollingshead which might buttress a contention of patentable invention. A plaintiff sets up its patent, defendant attacks it as lacking in patentable invention, and plaintiff, sometimes in rebuttal and sometimes *prima facie* (in anticipation of the defense of invalidity), will often present evidence of prior unsuccessful efforts of others as a persuasive circumstance (*supra* p. 8). In the present case there was no such evidence, and the court committed no error in taking that circumstance, along with others, into consideration.†

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*Hollingshead "struck on" the idea of watching the movie from the car "late in 1930 or 1931" (R. pp. 72-73). And in the latter part of February or early March, 1931, he built a wooden model (R. p. 83).

†In *Bresnick* v. *United States Vitamin Corp.*, 139 F. (2d) 239, 241 (C.C.A. 2d), Judge Learned Hand, after analyzing the alleged invention and its apparent absence of patentability, said: "Yet, even so, had the art waited long for the step (especially if there had been intermediate unsuccessful efforts) and if the step, when made, had been an answer for which the art had been looking, we might have yielded. That was not the situation." He then pointed out, as a further circumstance, that the interval "was not filled by a single unsuccessful effort" and held the patent invalid for absence of invention.

Nor did the defendant by pleading prior invention by others (R. p. 10, par. 18), a defense which it failed to substantiate, admit prior unsuccessful efforts of others, as petitioner contends (Br. p. 58). The court committed no error.

Point 8. This point is based upon the assertion (Br. p. 63) that the court "completely ignored a fundamental principle of patent law that the claimed combination of the patent in suit may constitute patentable invention." There is no basis whatever for such assertion.

Point 9. Petitioner asserts that the decision of the Court of Appeals is based upon a defense or ground "which was not pleaded, noticed, heard or considered in the trial court, and which was not assigned or specified in defendant's Statement of Points under Rule 75 (d)." This contention is manifestly without foundation *supra*, p. 4).

Conclusion.

The petition should be denied. There is no conflict of decisions to be resolved and no question of importance to the public as distinguished from that of the parties.

Respectfully submitted,

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Appendix.

AN IDEA IS NOT PATENTABLE. THE MEANS BY WHICH THE END IS ATTAINED MUST INVOLVE PATENTABLE INVENTION.

In language applicable to the present case, Judge Learned Hand in *National Sweeper Co.* v. *Bissell Co.*, 249 Fed. Rep. 196, 199, characterized the case as presenting "a picture suggestive rather of a commercial opportunity discovered than any necessary invention."

The following are some of the leading cases.

Knapp v. *Morss*, 150 U.S. 221. Plaintiff's patent was for a dress form, every part of which was adjustable. The idea was new and useful, but the means adopted were substantially the same as those used for opening and shutting the common umbrella, and therefore did not involve invention. Holding the patent invalid, the Supreme Court said (p. 228):

> "Tested by these authorities the validity of the patent in question must be ascertained, not from a consideration of the purposes sought to be accomplished, but of the means pointed out for the attainment thereof, and if such means, adapted to effect the desired results, do not involve invention, *they can derive no aid or support from the end which was sought to be secured.*"

In re Patton, 127 F. (2d) 324 (C.C.P.A.), involved an alleged invention relating to a fire protection system to combat mass aircraft bombing attacks. The idea was novel and useful and had been used by the government. The court held the claims unpatentable for want of invention in the means employed, saying (p. 327):

> "In this connection it is sufficient to say that *a system of transacting business*, apart from the means for

carrying out such system, is not within the purview of section 4886, *supra,* nor is an abstract idea or theory, regardless of its importance or the ingenuity with which it was conceived, apart from the means for carrying such idea or theory into effect, patentable subject matter [citing numerous cases] . . . Accordingly the question here presented is whether the structure defined in appealed claims 1, 7, 8 and 12, for carrying out appellant's fire-protective system against aircraft attack, involves invention in view of the disclosures" of the prior art.

Rubber-Tip Pencil Co. v. *Howard,* 20 Wall. 498, 507. The man who first thought of putting a rubber tip on the end of a pencil was a public benefactor and the rubber-tipped pencil quickly came into almost universal use.

> "*An idea of itself is not patentable,* but a new device by which it may be made practically useful is. The idea of this patentee was a good one, but his device to give it effect, though *useful,* was not new. Consequently he took nothing by his patent."

Miller v. *Eagle Mfg. Co.,* 151 U.S. 186, 201:

> "It is not the result, effect, or purpose to be accomplished which constitutes invention, or entitles a party to a patent, but the *mechanical* means or instrumentalities by which the object sought is to be attained."

National Battery Co. v. *Western Molded Products Co.,* 39 F. Supp. 954, 955 (aff. 132 F. (2d) 510). In finding for defendant, the court gave the patentee the credit for conceiving the useful idea of so labeling battery containers with a type of label which, when affixed, would have the ap-

pearance of being an integral part of the container. The court said, however, that "an idea is not patentable" and that the means used to translate the idea into actual use must be examined.

J. I. Case Co. v. *Gleaner Harvester Corp.*, 135 F. (2d) 553, 555 (C.C.A. 8th). The court pointed out (p. 554) that *when the problem presented itself the solution was obvious.* The patent issues "not for the result, but for having discovered some patentable means of producing the successful or improved result." Since here the means for producing the result simply represented an expedient of ordinary mechanical or engineering skill, no invention was involved.

As the court said in *Ajax Mfg. Co.* v. *National Mach. Co.*, 93 F. (2d) 344, 346 (C.C.A. 6th): ". . . however meritorious may be the inventor's thought in terms of result, unless the means adopted in attaining it denote invention . . . he may not have a valid patent."

In *Voightmann* v. *Perkinson*, 138 Fed. Rep. 56 (C.C.A. 7th), the fact that Voightmann was the first to conceive that a window with a fusible link would be a valuable adjunct to fireproof buildings did not lend patentability to his patent when the means used were old and non-inventive.

See also *Armstrong Seatag Corp. v. Smith's Island Oyster Co.*, 254 Fed. Rep. 821 (C.C.A. 4th); *In re Weeks*, 9 U.S.P.Q. 166 (C.C.P.A.); *Aron* v. *Manhattan R. Co.*, 132 U.S. 84; *Fowler* v. *City of New York*, 121 Fed. Rep. 747, 748 (C.C.A. 2d); *Wood* v. *Kahn*, 189 Fed. Rep. 399; aff. 198 Fed. Rep. 403 (C.C.A. 2d); *Prepayment Car Sales Co.* v. *Orange County Traction Co.*, 221 Fed. Rep. 939 (C.C.A. 2d); *Kruger* v. *Whitehead*, 153 F. (2d) 238, 239 (C.C.A. 9th); Walker on Patents (Deller's Ed.), secs. 20-22.